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April 9, 2018

BY ECF and ELECTRONIC MAIL

Hon. Analisa Torres
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Re: *The New York Times Company v. Dep't of Justice*, 18 Civ. 2054 (AT)

Dear Judge Torres:

I am counsel for Plaintiffs The New York Times Company and Charlie Savage in the above-referenced action. I write respectfully on behalf of both the Plaintiffs ("The Times") and the Defendant, the Department of Justice ("DOJ"), pursuant to the Court's Order dated March 8, 2018 (Dkt. No. 5), and in anticipation of the initial pretrial conference currently scheduled for April 16, 2018, at 11:40 a.m. (Dkt. No. 9).

Because this is an action brought pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, which seeks review of an agency action, we understand that pursuant to Rule 26(a)(1)(B)(i) and (f)(1) of the Federal Rules of Civil Procedure, this action is exempt from initial disclosures and the Rule 26(f) conference and report. In addition, the parties understand that pursuant to Local Civil Rule 16.1, this FOIA action is exempt from the requirement of a mandatory scheduling order under Rule 16(b). Accordingly, the parties respectfully submit the schedule set forth below in lieu of the proposed case management plan called for in paragraph 5 of the Court's initial conference order. We expect that this matter, like most FOIA matters, will be resolved either through motions for summary judgment without discovery or through settlement. *See Wood v. FBI*, 432 F.3d 78, 85 (2d Cir. 2005); *Carney v. U.S. Dep't of Justice*, 19 F.3d 807, 812 (2d Cir. 1994).

The parties submit the following information, pursuant to the Court's March 8, 2018 Order:

1. This is an action under FOIA seeking the production of records that Plaintiffs requested from DOJ in a FOIA request dated February 2, 2018 (“the Request”). The Request seeks “access to, including declassification review of as necessary, documents submitted by DOJ to the FISC, and orders or other documents issued by the FISC, in connection with the FISA order targeting Carter Page issued in October 2016, as well as its extensions, the existence of which and certain details of which were declassified by President Trump in connection to the HPSCI memo.” (Dkt. No. 1 (Complaint) ¶ 8). DOJ did not respond to the request in the time period permitted by FOIA, therefore giving this Court jurisdiction over the matter. Plaintiffs filed the complaint on March 7, 2018. Defendant was served with the complaint on March 14, 2018. Defendant’s answer is due on April 13, 2018.

2. The parties have agreed to the following schedule for the search and production of non-exempt responsive records: DOJ will provide a status update to the court on May 18, 2018, and will complete the processing and production of responsive, non-exempt documents by July 20, 2018. The parties will submit a joint status report proposing next steps on or before August 3, 2018. This schedule aligns with the schedules directed by federal district courts in three other cases involving the same or similar records requests. *See James Madison Project, et al. v. United States Department of Justice*, No. 17 Civ. 597-APM (D.D.C.) (Dkt. Entry Dated Mar. 19, 2018); *Poulsen v. United States Department of Defense, et al.*, No. 17 Civ. 3531-WHO (N.D. Cal.) (Dkt. No. 46); and *Gizmodo Media Group, LLC v. Department of Justice*, 17 Civ. 3566-DLC (S.D.N.Y.) (Dkt. No. 44).

3. Rather than submit a proposed schedule for summary judgment motions at this time, the parties request to address whether motion practice is necessary in the joint status report on August 3, 2018, and to propose a schedule at that time if motions are contemplated.

The parties are prepared to appear for the court conference on April 16, 2018, as set forth in the Court’s order. However, because DOJ is still in the initial stages of processing potentially responsive documents for production, an effort that involves various complex considerations including detailed classification analysis, the parties respectfully propose that the conference be adjourned to a date after July 20, 2018 when the production is complete, provided the Court accepts the schedule set forth here.

Respectfully submitted,

 /s/
David E. McCraw

GRANTED. By **May 18, 2018**, the Government shall file a status letter. By **July 20, 2018**, the Government shall finish producing all responsive, non-exempt documents on a rolling basis. By **August 3, 2018**, the parties shall file a joint status letter. The initial conference scheduled for April 16, 2018 is ADJOURNED *sine die*.

cc: Andrew E. Krause, AUSA
(via email)

SO ORDERED.

Dated: April 10, 2018
New York, New York



ANALISA TORRES
United States District Judge